

08-29-7

AFK IFW



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/750,708 Confirmation Number: 3807
Applicant: Robert J. Simmons
Filed: January 2, 2004 Date of Appeal Brief: August 27, 2007
Group #: 3637
Examiner: Phi Dieu Tran A

Docket No: J-BSIM.1009

Customer No: 56703

For: Building Frame With Open/Openable-Top, Hollow, Tubular Column Structure

MS Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

APPEAL BRIEF UNDER 37 C.F.R. §41.37

In support of the Appeal to the Final Rejection of the claims in the above-referenced application, dated April 17, 2007, and Applicant's Notice of Appeal, filed June 17, 2007, Applicant respectfully submits the following Appeal Brief.

1. Statement of the Real Party in Interest under 37 C.F.R. §41.37 (c)(1)(i)

The real party in interest is Robert J. Simmons, having a residence in Hayward, California, USA.

2. Status of Related Appeals and Interferences under 37 C.F.R. §41.37(c)(1)(ii).

There are no related Appeals or Interferences as defined in 37 C.F.R. §41.37(c)(1)(ii). There is an Appeal for a Division of the instant Application, Serial No. 11/385,604. 08/29/2007 RMRZ11 03883049 10750708
JL 1002462 250.00 CP

3. Status of all Claims under 37 C.F.R. §41.37(c)(1)(iii).

Claims 3-6 are pending. Claims 1 and 2 have been cancelled. All claims stand rejected. All claims pending in the Application are herebyAppealed.

There are two independent claims: claims: 3 and 6

4. Status of Amendments under 37 C.F.R. §41.37(c)(1)(iv)

No amendments after final rejection have been filed.

5. Summary of the Claimed Subject Matter under 37 C.F.R. §41.37(c)(1)(v)

The invention is method of fabricating a site-built building having a frame therein, using a novel column structure which forms part of the frame of a plural-story building structure, which uniquely allows for the implementation of several categories of what are referred to herein as construction-extension activities. According to a preferred and best-mode embodiment of the invention, columns for a plural-story building frame are constructed as hollow, tubular components. In whatever stage of building-frame completion "currently" exists, upper end regions in installed columns extend above what is referred to herein as the load-bearing portion of a building frame structure. Such a load-bearing portion is defined as that portion of a building frame which contains load-bearingly interconnected columns and beams. These column upper end regions nominally each terminates at an open, upwardly facing, upper end, referred to herein as a mouth. Such a mouth opens to the underlying hollow interior of the upper end region in the associated column component, and together with that interior defines what is referred to herein as a port. In a finished building, these mouths are closed off and environmentally sealed by appropriate, removeably installed plugs. While a building frame is still under construction, the column mouths are normally left open.

It is these port-containing upper-end column regions which facilitate the activity

which is referred to herein as construction-extension activity. While a building frame is still under construction, the ports provided by these regions allow for the temporary, removable installation of portable crane structures, such as davit crane structures, which can be employed to assist "locally" with various construction-extension tasks. In this kind of situation, the underlying building frame structure effectively acts as a supporting mast, or tower, for the installed crane, providing, fully, all lateral stabilization of and support for the port-received structure. It will be appreciated by one of ordinary skill in the art that what is a "port" during a given stage of construction will become a part of the load-bearing portion of a building frame structure.

As there is no guidance provided by the U. S. Patent and Trademark Office as to *how* the independent claims are to be linked to the drawings and specification, Applicant has adopted the following format, which includes recitation of the independent claims, annotated with reference numbers, figure numbers and specification page and line numbers, wherein a representation, *e.g.*, (10 Fig. 1 6/1-3) directs the reader to reference number 10 of Fig. 1, and to specification page 6, lines 1 to 3.

Claim 3. A building method for fabricating a site-built, plural-story building (10 Fig. 1 6/18-12/5) comprising

furnishing a column-and-beam structural building frame (10 Fig. 1 6/18-7/16) possessing a load-bearing portion (46, 48 Fig. 1 8/3-23) which is defined by nodally interconnected columns and beams (12, 14, 16, 18, 20, 22, 24, 26, 28 Fig. 1 and 30, 32, 34, 36, 38, 40 Fig. 1, respectively 7/2-8), where at least one column (12 Fig. 1) is formed as a hollow, tubular structure,

providing in the at least one column, substantially immediately above a nodal

connection (44 Fig. 1 7/7-11) between the mentioned one column and a beam, an upper-end utility region which extends above and beyond the frame's load-bearing portion (46, 48 Fig. 1 8/3-23), and which region terminates in a nominally open, upwardly facing mouth (12a₁ Fig. 2A 7/17-8/2) which opens to the hollow interior of the at least one column to define therewith a utility port (12a₁, 12a₂ Fig. 2A 7/17-8/2),

employing the defined utility port, inserting downwardly thereinto, for stabilized insertion, reception and use, a building, construction-extension instrumentality selected from the list consisting of (a) an installable/removable crane structure (54, 56 Fig. 1 10/1-11/2), (b) a column-like element provided for the addition of selected building superstructure (64, 66 Fig. 5 11/15-23; 70 Fig. 6 12/1-5) and (c) additional building infrastructure (60 Fig. 4 11/2-12) feedable downwardly through said port (12a₁, 12a₂ Fig. 2A 7/17-8/2) toward a selected elevation in said building structure, and

at least for such a crane structure and superstructure, utilizing direct lateral engagement therebetween and the receiving column utility port to furnish fully all lateral stabilization of and support for the port-received structure (10/1-11).

Claim 6. A deployable-crane (54, 56 Fig. 1) building method (10 Fig. 1 6/18-12/5) for use in fabricating a site-built, plural-story building comprising

providing a column-and-beam structural building frame (10 Fig. 1 6/18-7/16) having elongate, nodally interconnected (44 Fig. 1 7/7-11), upright columns (12, 14, 16, 18, 20, 22, 24, 26, 28 Fig. 1) and generally horizontal beams (30, 32, 34, 36, 38, 40 Fig. 1),

providing in at least one of these columns, substantially immediately above a nodal connection (44 Fig. 1) between this at least one column and a horizontally extending beam, an

open, upwardly facing end (12a₁, 12a₂ Fig. 2A 7/17-8/2)

removeably seating the base (56a, 56a Fig. 1 10/1-11/2) of a load-handling crane (54, 56 Fig. 1) within the mentioned open column end (12a₁, 12a₂ Fig. 2A 7/17-8/2), and utilizing the frame of nodally interconnected columns and beams, including the mentioned nodal connection which exists between the at least one column and the mentioned horizontally extending beam, furnishing direct load-bearing support for any such base-seated crane, with seating of a crane base in such an open column end furnishing the totality of lateral stabilization and support for the seated crane (10/1-11).

6. Grounds of Rejection to be Reviewed on Appeal under 37 C.F.R. §41.37(c)(1)(vi)

Ground A: Claim 3 stands rejected under 35 U.S.C. § 112, 2d paragraph.

Ground B: Claims 3 - 6 stand rejected under 35 U.S. C. § 102(b) as being anticipated by U. S. Patent No. 2,203,113 to Uecker *et al.*

7. Arguments under 37 C.F.R. § 41.37 (c)(1)(vii)

Ground A: Claim 3 stands rejected under 35 U.S.C. § 112, 2d paragraph.

The Examiner cites the phrase "...utilizing direct lateral engagement therebetween...." as being unclear because the Examiner does not understand that "therebetween" means that there is a direct lateral engagement between the crane structure, the superstructure and the column utility port - such engagement provides lateral stabilization and support for the port-received structures (the items of claim 3, paragraph 3, identified as (a), (b), and (c)). This was carefully explained to the Examiner in response to the Office action prior to the Final Office action from which this Appeal is taken. It is also clear that the Examiner does not understand the elements of claim 3, which are carefully set forth as three elements, annotated by (a), (b), and (c)

to make very clear that there are three elements. Two of these elements are further defined by the language of claim 3, in what the Examiner has identified as paragraph 4 of the claim, which clearly describes a relationship between the crane structure (a), the superstructure (b) and the receiving column utility port. The 35 U.S.C. § 112, 2d paragraph rejection should be overruled by the Board.

Ground B: Claims 3 - 6 stand rejected under 35 U.S. C. § 102(b) as being anticipated by U. S. Patent No. 2,203,113 to Uecker *et al.*

Claim 3 recites that the method of the invention is for fabricating a site-build, plural-story building have a column and beam structural building frame. The applied art is a scaffold having a winch thereon. At no time will the art of '113 be used as part of a building frame. Claim 3 requires that the utility port be located above and beyond a load-bearing portion of a building frame, or above a column component which is continuous with column components in the load-bearing portion of the building frame. Assuming, *arguendo*, that '113 teaches a building frame, the crane thereof is mounted on a load-bearing portion of the frame, not on a column component extending continuously *above* the load-bearing portion of the building frame. This alone is sufficient to render claim 1 allowable over the applied 35 U.S. C. § 102(b) art.

Additionally, the building frame above the load-bearing portion is required to form part of a crane supporting mount structure. Again, the portion of the frame of '113 on which the crane is mounted is part of the load-bearing portion. The crane shown in '113 is not fully supported by anything which may remotely be compared to Applicant's port. The figures of '133 clearly show, and the specification describes, use of a non-port located brace, comprising members 35, 36, 37 and 42, which latter element is secured to the deck of the scaffolding. See,

‘113, Fig. 1, page 1, col. 2, line 47 to page 2, col. 1, line10. Claim 3 requires, for the crane structure, *et seq.*, “...utilizing engagement therebetween and the receiving column utility port to furnish *FULLY* all lateral stabilization of and support for the thus port-received structure.” This language finds support in the Specification, page 10, lines 1-11, wherein the connection is described as a lateral moment connection, which is understood by one of ordinary skill in the art as priding all lateral support, as well as vertical support from the column. This renders claim 1 allowable over the applied art without any further consideration, as the applied art is not *FULLY* laterally stabilized by the alleged utility port.

Finally, claim 3 requires that the utility port and column components be configured to allow additional infrastructure to be feedable downwardly through the port towards a selected elevation in the building structure. There is little detail of the scaffold construction in ‘113, however, referring to U. S. Patent No. 2,043,498 of Uecker, cited in ‘113 at page 1, col. 1, lines 44-48, detail is shown in Fig. 5 thereof, which precludes the applying either of the Uecker *et al.* references to the structure and function claimed by Applicant, as the column components of ‘113 and ‘498 are aligned and stabilized by a solid plug, which precludes training anything down a column component. (Note: while the images for ‘498 appear when searching the U. S. Patent and Trademark Office website, any attempt to download or otherwise print this patent results in two drawing page 1, and no page two, thus, to view this patent, one has to look only at the screen version thereof) Again, claim 3 would be allowable over the applied art if it only claimed this feature, which feature was present in the Application as filed, and has not been amended during prosecution of this Application.

Claim 4 is allowable as it requires each one of plural column components to be

provided with a like, upper-end utility region. This means that all of the column components have the same type, configuration, *etc.* Clearly, in Fig. 1 of '113, guard rail 19 is formed using some of the column components, and the top of the guard rail uprights do not have like, upper-end utility regions as do the column components. It should be noted that, if there is any portion of the structure of '113 which extends above the load-bearing portion, it is the guard rail, which fails completely to meet the limitation of the claims of this Application.

Claim 5 is allowable with its allowable parent claims.

Claim 6 is directed solely to the provision of a deployable-crane building method, and is allowable for the reasons set forth in connection with claim 1 as that claim applies to the method of using the crane structure.

Turning to the Office action, page 4, paragraph 4, while the Examiner has deemed Applicant's previously presented argument to be moot, the Examiner has failed fully to understand the previously presented arguments: Applicant has clearly recited the building frame and structures appurtenant thereto, which the Examiner has chosen to ignore. The Examiner has deemed a scaffold to be a building frame, and to have a load-bearing portion. The Examiner has deemed a support of the scaffold to be a column having a utility port, however, the utility port is required to be above the load-bearing portion, which is not shown in '113, and to be hollow so that building infrastructures are feedable downwardly through the port towards a selected elevation in the building. As previously described, '113 does not have the requisite construction. Finally, the Examiner has ignored the provision of *fully furnishing all lateral stabilization* of a crane structure by a utility port located at the top of a column.

Having shown that the applied art does not teach nor suggest the appellant's

invention as claimed, Appellants request that the Examiner's final rejection of these claims be reversed.

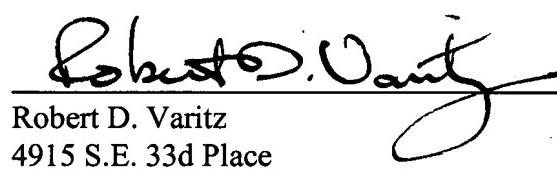
Customer Number

56703

Respectfully Submitted,

ROBERT D. VARITZ, P.C.

Registration No: 31436
Telephone: 503-720-1983
Facsimile: 503-233-7730



Robert D. Varitz
4915 S.E. 33d Place
Portland, Oregon 97202

RDV:bd

**8. CLAIMS APPENDIX TO APPELLANT'S BRIEF under 37 C.F.R. § 41.37
(c)(1)(viii)**

The claims on appeal in the above-referenced application are reproduced hereinbelow as follows:

Claim 1-2. CANCELLED

Claim 3. A building method for fabricating a site-built, plural-story building comprising furnishing a column-and-beam structural building frame possessing a load-bearing portion which is defined by nodally interconnected columns and beams, where at least one column is formed as a hollow, tubular structure,
providing in the at least one column, substantially immediately above a nodal connection between the mentioned one column and a beam, an upper-end utility region which extends above and beyond the frame's load-bearing portion, and which region terminates in a nominally open, upwardly facing mouth which opens to the hollow interior of the at least one column to define therewith a utility port,
employing the defined utility port, inserting downwardly thereinto, for stabilized insertion, reception and use, a building, construction-extension instrumentality selected from the list consisting of (a) an installable/removable crane structure, (b) a column-like element provided for the addition of selected building superstructure, and (c) additional building infrastructure feedable downwardly through said port toward a selected elevation in said building structure, and at least for such a crane structure and superstructure, utilizing direct lateral engagement therebetween and the receiving column utility port to furnish fully all lateral

stabilization of and support for the thus port-received structure.

Claim 4. The method of claim 3 which additionally comprises furnishing the mentioned building frame with more columns each of which is formed as a hollow, tubular structure, and providing in each of those more columns upper-end utility regions.

Claim 5. The method of claim 4, wherein, with respect to the reception and use of installable/removable crane structures as accommodated by the presence of plural, provided utility ports, utilizing such ports to enable a construction-extension practice where one installed crane structure which is installed in one utility port is employable to manipulate and install another crane structure in an adjacent utility port.

Claim 6. A deployable-crane building method for use in fabricating a site-built, plural-story building comprising

providing a column-and-beam structural building frame having elongate, nodally interconnected, upright columns and generally horizontal beams,

providing in at least one of these columns, substantially immediately above a nodal connection between this at least one column and a horizontally extending beam, an open, upwardly facing end,

removeably seating the base of a load-handling crane within the mentioned open column end, and

utilizing the frame of nodally interconnected columns and beams, including the mentioned nodal connection which exists between the at least one column and the mentioned horizontally extending beam, furnishing direct load-bearing support for any such base-seated crane, with seating of a crane base in such an open column end furnishing the totality of lateral stabilization and support for the seated crane.

9. EVIDENCE APPENDIX TO APPELLANT'S BRIEF under 37 C.F.R. § 41.37

(c)(1)(ix)

NONE

10. RELATED PROCEEDINGS APPENDIX TO APPELLANT'S BRIEF under 37

C.F.R. § 41.37 (c)(1)(x)

NONE



CERTIFICATE OF EXPRESS MAILING

"Express Mail" Mailing Label No.
Date of Deposit - August 27, 2007

EM088409755US

I hereby certify that the attached Appeal Brief and PTOForm 2038 Credit Card authorization in the amount of \$250.00 is enclosed to pay the requisite Appeal Brief Fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to:

MS Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450



Robert D. Varitz